REMARKS

Applicant respectfully requests reconsideration of this application.

Reconsideration of Final Rejection

MPEP §706.07(a) states "a second or any subsequent actions on the merits shall be final, except where the examiner introduces a new ground of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclose statement filed during the period set forth in 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17(p). Furthermore, a second or any subsequent action on the merits in any application or patent undergoing reexamination proceedings will not be made final if it includes a rejection, on newly cited art, other than information submitted in an information disclosure statement filed under 37 CFR 1.97(c) with the fee set forth in 37 CFR 1.17 (p), of any claim not amended by applicant or patent owner in spite of the fact that other claims may have been amended to require newly cited art. Where information is submitted in reply to a requirement under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment."

Applicant respectfully submits that the final rejection is improper because the Final Office Action introduces new grounds of rejection that is neither necessitated by applicant's amendment of the claims nor based on information submitted in an information disclose statement. Where information is submitted in reply to a requirement under 37 CFR 1.105, the examiner may NOT make the next Office action relying on that art final unless all instances of the application of such art are necessitated by amendment.

Accordingly, Applicant respectfully requests the final rejection be reconsidered and withdrawn.

Rejections Under 35 U.S.C. § 112

Claims 1, 11, 17 and 22 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action states it is "ambiguous how the backup root splitters can be reassigned as the new primary splitter without a data stream to split following a failure in the primary root splitter."

Applicant respectfully submits that one of ordinary skill in the art would understand from the specification and drawings how the backup root splitters can be reassigned as the new primary splitter (see MPEP 2173.02). Applicant is unsure why the office action states that the reassignment is ambiguous without a data stream to split following a failure in the primary root splitter. Once the backup root splitter is reassigned as the new primary splitter, one of ordinary skill in the art would understand that it would perform the function of the primary root splitter "to split a data stream transmitted from an upstream server into a plurality of leaf splitter streams," as claimed. Accordingly, Applicant respectfully request the rejection to the claims under 35 USC §112, second paragraph be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claims 1, 11, 17 and 22 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No US006665726B1 of Leighton et al. ("Leighton") in view of U.S. Patent Application No. US006292905B1 of Wallach et al. ("Wallach").

Leighton discloses that a critical problem with existing streaming methods are they are not fault tolerant. FIG. 1 of Leighton illustrates why this is the case. In this example, a source signal (A) is sent to a splitter (B), which then sends copies of the signal to ten splitters

(C1, . . . , C10). Each of the second level splitters then sends a copy of the signal to five end

customers (D1, . . . D50). Thus, for example, splitter C1 sends a copy to end users D1-D5,

splitter C2 sends a copy to end users D6-D10, and so forth. If communications at a given

splitter fail, however, certain users are unable to receive the original signal. In the network

of FIG. 1 of Leighton, this would be the case with respect to users D6-D10 if C2 fails. To

overcome this problem, it is also known in the art to enable end users to detect they are no

longer receiving the streaming signal and to enable such users to attempt to contact an

alternative splitter (e.g., C3) in an effort to get another copy of the signal. Such approaches,

however, can result in an interruption of the signal and are expensive to implement. (See

Leighton, column 1, lines 40-58).

Leighton discloses a solution to the problem by configuring a system to enable every

concentrator C to receive a copy of the source signal data stream from precisely two splitters.

(See Leighton, column 5, lines 33-62; Figure 2).

Wallach discloses a system wherein when a server resident process detects a failure

of the primary server, an enhanced database is updated to reflect the failure of the primary

server, and the affiliation of the resource is changed from its primary to its backup servers.

(See Wallach, column 3, lines 50-55).

Applicant does not admit that Leighton is prior art and reserves the right to swear

behind the reference at a later date. Nevertheless, Applicant respectfully submits that there is

no motivation to combine Leighton and Wallach. Leighton explicitly states that conventional

streaming methods are not fault tolerant, as summarized above. Wallach does not disclose

fault tolerance with relation to streaming. Therefore, Leighton does not provide an

expectation of success when using the fault tolerance method as disclosed in Wallach.

Rather, Leighton discloses a method where two different servers direct a stream to a single node, whereby if one of the servers fails, the other will continue to transmit a stream. In this way, Leighton does not require a backup server as disclosed in Wallach.

Nonetheless, even if it is determined that there is motivation to combine the references, Applicant respectfully submits that the combination does not disclose or suggest each and every element as claimed. Specifically, Applicant submits that the combination does not disclose "root splitter reassignment logic to reassign one of said backup root splitters as a new primary root splitter responsive to detecting a problem with said primary root splitter," as recited in claim 1. The combination does not disclose or suggest that one of the plurality of leaf splitters is also a backup root splitter. The sections of Wallach cited in the Office Action appear to assert that the backup server is a dedicated backup server. Such a backup server does not perform a dual function of the plurality of leaf splitters that split each of the leaf splitter streams into a plurality of end user streams, as recited in claim 1.

Claims 11, 17, and 22 recite elements or elements similar to the root splitter reassignment logic as recited in claim 1 and therefore are patentable at least for the reasons stated above. Accordingly, Applicant respectfully submits that the combination does not disclose or suggest each and every element as recited in claims 1, 11, 17, and 22. Therefore, Applicant respectfully requests the rejection to claims 1, 11, 17, and 22 under 35 USC §103(a) be withdrawn.

Claims 2-10, 12-16, 18-21 and 23-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No US006665726B1 of Leighton et al. ("Leighton") in view of U.S. Patent Application No. US006292905B1 of Wallach et al.

("Wallach") and further in view of U.S. Patent Application No. US006112239A of Kenner et al. ("Kenner").

As articulated above, claims 1, 11, 17, and 22 are patentable over the combination of Leighton and Wallach. Kenner fails to cure the deficiencies of Leighton and Wallach including the failure to disclose or suggest elements of or elements similar to "root splitter reassignment logic to reassign one of said backup root splitters as a new primary root splitter responsive to detecting a problem with said primary root splitter." Claims 2-10, 12-16, 18-21 and 23-24 are dependent on one of the claims 1, 11, 17, and 22. Accordingly, Applicant respectfully submits that the combination does not disclose or suggest each and every element as recited in claims 1, 11, 17 and 22. Therefore, Applicant respectfully requests the rejection to claims 2-10, 12-16, 18-21 and 23-24 under 35 USC §103(a) be withdrawn.
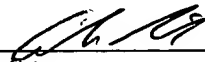
CONCLUSION

Applicant respectfully submits that the rejections have been overcome by the remarks, and that the pending claims are in condition for allowance. Accordingly, Applicant respectfully requests the rejections be withdrawn and the pending claims be allowed.

If there are any additional charges, please charge Deposit Account No. 02-2666 for any fee deficiency that may be due.

Respectfully submitted,

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